



## COMMODITY FUTURES TRADING COMMISSION

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May 16, 2018

**By ECF**

The Honorable Jack B. Weinstein  
 United States District Court  
 Eastern District of New York  
 225 Cadman Plaza East  
 New York, New York 11201

**Re: *Commodity Futures Trading Commission v. Patrick K. McDonnell and CabbageTech, Corp. d/b/a Coin Drop Markets*, No. 18-CV-00361 (JBW)(RLM)**

Dear Judge Weinstein:

I am a Trial Attorney in the Division of Enforcement (the “Division”) of the Commodity Futures Trading Commission (the “Commission”) and represent the Commission in the captioned matter. I write concerning the motion to dismiss filed by Defendant Patrick K. McDonnell on May 7, 2018 that was addressed to Chief Magistrate Judge Mann. (ECF 69.) Shortly after McDonnell’s motion was filed, Judge Mann issued an electronic order advising the Defendant that any dispositive motion should be addressed to Your Honor. (See May 7, 2018 Order.) Judge Mann further noted that Your Honor had previously rejected the Defendant’s jurisdictional challenge. (*Id.*)

Furthermore, it appears that McDonnell’s second motion to dismiss is nothing more than an untimely motion for reconsideration of this Court’s comprehensive March 6, 2018 Memorandum and Order, which unequivocally held that the “[l]anguage in 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1 establish the CFTC’s regulatory authority over the manipulative schemes, fraud, and misleading statements alleged in the complaint.” *CFTC v. McDonnell*, 287 F. Supp. 3d 213, 229 (E.D.N.Y. 2018).

In light of Judge Mann’s May 7, 2018 Order, as well as the duplicative nature of McDonnell’s motion, the Commission respectfully requests guidance as to whether there is a pending motion before Your Honor for which a response from the Commission is needed. If Your Honor plans to consider McDonnell’s motion as already filed, the Commission requests permission to propose a schedule to fully brief the motion.

Hon. Jack B. Weinstein

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Respectfully submitted,

/s/ Alejandra de Urioste

Alejandra de Urioste

cc: Hon. Chief Magistrate Judge Mann (by ECF)  
Patrick K. McDonnell (by electronic mail)